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CHARLES ELMORE
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

No. 699

JAY M. TOWLANE,

Petitioner,

vs.

STATE OF ARKANSAS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT AND BRIEF IN SUPPORT THEREOF

T. Storey Huie, Jr.
Hot Springs, Arkansas,
Attorney for Petitioner.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 699

JAY M. ROWLAND,

Petitioner,

vs.

STATE OF ARKANSAS,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT AND BRIEF IN SUPPORT THEREOF

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Your Petitioner, Jay M. Rowland, prays that a Writ of Certiorari issue to review a decision of the United States Court of Appeals for the Eighth Circuit, entered February 2, 1950, affirming the judgment of the United States District Court, Western District of Arkansas, Hot Springs Division, entered September 2, 1949, dismissing Petitioner's Petition for a Writ of Habeas Corpus, on the ground that the action was prematurely brought, in that at the

time of the institution of the action Petitioner was at liberty on bail, and was not detained or restrained of his liberty within the meaning of the Statutes of the United States dealing with Habeas Corpus (R. p. 34).

A

Summary Statement of Matter Involved

Petitioner was arrested by the Sheriff of Garland County, Arkansas, on March 19, 1947, having been indicted on a charge of bribery by the Garland County, Arkansas Grand Jury. He was released on $1,000.00 bond to appear for trial.

Petitioner was convicted in the Garland County Circuit Court on October 12, 1947. He made an appeal bond in the sum of $3,000.00, pending appeal to the Supreme Court of Arkansas (R. p. 1).

The Supreme Court of Arkansas affirmed the conviction on June 27, 1948. A Petition for Re-hearing was denied by the Supreme Court of Arkansas on October 4, 1948 (R. p. 1).

The Supreme Court of Arkansas then granted the right to file a Petition for Writ of Certiorari in the Supreme Court of the United States, upon filing with the Clerk of the Supreme Court of Arkansas a surety bond in the sum of $3,000.00 to guarantee Petitioner's compliance with the judgment of conviction affirmed by the Supreme Court of Arkansas, which bond is now and has at all times during the proceedings in the Federal Courts been in full force and effect, but held in abeyance pending the final determination of Petitioner's rights guaranteed to him by the Fourteenth Amendment of the Constitution of the United States of America (R. p. 2).

That on December 30, 1948, Petitioner herein filed a Petition for Writ of Certiorari in the Supreme Court of the United States, No. 488. The Petition for Writ of Certiorari was denied by the Supreme Court of the United States on February 28, 1949, and a Petition for Re-hearing was denied by said Court on March 28, 1949 (R. p. 1-2).

On the following day, March 29, 1949, your Petitioner filed a Petition for a Writ of Habeas Corpus in the United States District Court, Western District of Arkansas, Hot Springs Division, where your Petitioner resided. Said Petition was granted by the Court, and Petitioner made $3,000.00 bond to the United States Marshal to appear for hearing on the Petition (R. p. 6-7).

On March 30, 1949, the Clerk of the Supreme Court of Arkansas was notified and issued an order to Petitioner to surrender, which has been held in abeyance during the proceedings in the Federal Courts upon this Writ of Habeas Corpus (R. p. 25).

Several hearings were had in the United States District Court, and before the merits of the case were adjudicated, the State of Arkansas filed a Motion to Dismiss, on the grounds that the action was prematurely filed (R. p. 26).

This Motion was sustained by the United States District Court and the Petition dismissed on September 2, 1949 (R. p. 33-35).

Petitioner then appealed to the United States Court of Appeals for the Eighth Circuit, which Court affirmed the lower Court on February 2, 1950 and denied a Petition for Re-hearing on February 24, 1950. It is from this decision that Petitioner asks the United States Supreme Court to grant his Petition for a Writ of Certiorari and to reverse the said judgment of the United States Court of Appeals for the Eighth Circuit (R. p. 38-40).

B

Statement As To Jurisdiction

Your Petitioner relied upon the case and followed the precedent set in the Seventh Circuit in *Mackenzie* v. *Barrett*, 141 Fed. 964, 73 C.C.A. 280. This case holds unconditionally that one under arrest, but at large on bail, is entitled to a Writ of Habeas Corpus the same as if the arrest were accompanied by actual imprisonment (R. p. 39).

The United States District Court in the case at bar held in effect that Petitioner was not entitled to the Writ, as he was at large on bail when his petition was filed, and the United States Court of Appeals for the Eighth Circuit has affirmed the lower Court (R. p. 39).

It is within the jurisdiction of the United States Supreme Court to determine whether the Seventh Circuit or the Eighth Circuit Court of Appeals is correct in this matter.

The case of *Mackenzie* v. *Barrett* (*supra*) is a case in which the Writ was asked in the Federal Court to determine violations of Petitioner's Constitutional rights by State action.

The case at bar is also a case in which the Writ is asked in a Federal Court to determine violation of Petitioner's rights by State action.

C

Question Presented

Can your Petitioner, who is held to answer to the Supreme Court of the State of Arkansas upon its affirmance of a judgment of conviction, and at large on bail, maintain an action of Habeas Corpus in the United States District Court in the territorial jurisdiction in which Petitioner

resides and is restrained under bond; or it is necessary that Petitioner be placed in jail or the penitentiary before he can maintain an action of Habeas Corpus in the Federal Court to determine whether his rights guaranteed to him by the Fourteenth Amendment to the Constitution of the United States with reference to discrimination and due process of law have been violated by State action?

Conclusion and Prayer

The question presented is a matter of importance to the public, to the Judiciary, and to the Bar generally, and should be decided by this Court.

WHEREFORE, Petitioner prays that this Court issue its Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit, commanding that Court to certify and send to this Court for its review and determination on a day certain to be named therein, a full and complete transcript of all the record and all proceedings in the case numbered and entitled on its Docket as Number 14,050 Habeas Corpus, Jay M. Rowland, Appellant, v. State of Arkansas, Appellee, and that said judgment of the said United States Court of Appeals, for the Eighth Circuit, be reviewed by this Court, and that this Petitioner have such other and further relief in the premises as to this Court may seem just and proper.

Respectfully submitted,

C. FLOYD HUFF, JR.,
Hot Springs, Arkansas,
Attorney for the Petitioner.

Verification

STATE OF ARKANSAS,
County of Garland, ss:

Comes JAY M. ROWLAND, and being first duly sworn, deposes and says:

That he is the Petitioner in the within action; that he has read the foregoing Petition for Writ of Certiorari and knows the contents thereof; and that the same is true and correct to his own knowledge.

JAY M. ROWLAND,
Petitioner.

Subscribed and sworn to before me, the undersigned, a Notary Public, duly commissioned and acting, within and for the State and County aforesaid, this 15th day of March 1950.

ANNETTE WRIGHT,
Notary Public.

My Commission expires September 3, 1950. [SEAL]

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 699

JAY M. ROWLAND,

Petitioner,

vs.

STATE OF ARKANSAS,

Respondent

PETITIONER'S BRIEF

Facts

The facts are set forth in the Petition herewith. The matter involved herein is primarily a question of law as to whether or not Petitioner, at large on bail, but held to answer to the judgment of a State Court and within the territorial jurisdiction of the United States District Court, may maintain Habeas Corpus proceedings as approved by the United States Court of Appeals for the Seventh Circuit, or that he be in jail—actual physical custody—as required by the United States Court of Appeals for the Eighth Circuit.

Opinion and Argument

The opinion of the United States District Court that the case of *Mackenzie* v. *Barrett*, 141 Fed. 964, 73 C. C. A. 280,

may well have been over-ruled by the case of *Walmore* v. *Titmore*, 61 Fed. (2nd) 909, wherein (although the *Mackenzie* case (*supra*) was not referred to) Habeas Corpus was refused one at liberty on bail, citing *Stallings* v. *Splain*, 253 U. S. 339 (R. p. 33). The Court of Appeals affirmed in the same language (R. p. 39).

In the *Mackenzie* case (*supra*), relied upon by Petitioner, the party was under bond to a State Court within the territorial jurisdiction of the United States District Court, and which case involved a question of violation of Constitutional rights by State action.

The *Walmore* case (*supra*) does not hold that Walmore, while on bond, could not maintain his action in the territorial jurisdiction of the Court to which he was held to answer. He was indicted in the United States District Court for the Western District of Wisconsin. He was arrested in the Eastern District of Wisconsin. He made bond to answer the charge against him in the Western District of Wisconsin. He was, therefore, under actual restraint in the Western District, and, of course, could not maintain his Habeas Corpus action in the Eastern District, as there was absolutely no restraint by bond or otherwise in the Eastern District.

The above case was based upon the authority of the Supreme Court of the United States in *Stallings* v. *Splain* (*supra*). Stallings was indicted in the United States District Court in Wyoming. He was arrested on that charge while in the District of Columbia. He made a bond to the Court in Wyoming to answer the charge. He then filed Habeas Corpus action in the District of Columbia. Naturally, he could not maintain the action there as there were no charges against him in the District of Columbia, and he was restrained by bond to appear in Wyoming by the Wyoming Court—a question entirely of territorial jurisdiction.

Neither the *Walmore* case (*supra*) nor the *Stallings* case (*supra*) holds that they could not maintain Habeas Corpus proceedings in the jurisdictions of the Courts by which they were restrained by bond. The question of whether the bonds were sufficient restraint was not raised in either case. The Courts simply held that there was no restraint whatever by bond or otherwise in the territorial jurisdictions where they filed their actions of Habeas Corpus.

If, however, they had filed their Habeas Corpus actions within the territorial jurisdictions in which they were charged and held under bond to answer, and if the Courts had held that bonds were not sufficient restraint, then in that case only would they have been in conflict and overruled the *Mackenzie* case (*supra*).

The fact that a person is restrained by the Court in the territorial jurisdiction in which he has given bail to appear was determined by this Court in *Taylor* v. *Taintor*, 21 L. Ed. 287, 83 U. S. 366, and at page 373 appears the following:

> "We have shown that when McGuire was arrested in New York the original imprisonment, under the information in Connecticut was continued; that the bail had a right to seize him wherever they could find him; that the prosecution in Connecticut was still pending, and that the superior court having acquired jurisdiction, it could neither be arrested or suspended in invitum, by any other tribunal. Though beyond the jurisdiction of Connecticut, he was still, through his bail, in the hands of the law of that state, and held to answer for the offense with which he was charged."

Section 2254 of Chapter 153 of the United States Code, effective September 1, 1948, specifically governs matters of State custody. The jurisdictional requirement therein is that Petitioner, in custody pursuant to the judgment of a State Court, shall have exhausted the remedies available in the Courts of the State.

It has been determined by the United States District Court that Petitioner has exhausted his remedies (R. p. 26).

The Respondents in their return presented the proposition that they were not proper parties (R. p. 13-15).

The Sheriff of Garland County, Arkansas, I. G. Brown, and the Attorney General of the State of Arkansas, Ike Murry, were made parties to the action. In the proceedings, the Sheriff was represented by R. Julian Glover, Prosecuting Attorney of Garland County, Arkansas, and the above named Attorney General represented the State of Arkansas.

The Sheriff of Garland County, Arkansas and the Attorney General of the State of Arkansas are the real parties in interest. *Knewel* v. *Egan*, 268 U. S. 442-448. This is done as directed by Section 2252 of Chapter 153 of the United States Code.

Conclusion

It is respectfully submitted that the United States District Court and the United States Court of Appeals for the Eighth Circuit erred in holding that the case of *Mackenzie* v. *Barrett* (*supra*), decided by the United States Court of Appeals for the Seventh Circuit, had in effect been overruled, thereby rendering a judgment in the Eighth Circuit which is in direct conflict with the judgment of the Seventh Circuit.

It is, therefore, within the jurisdiction of the Supreme Court of the United States to review this case and definitely establish the precedent as to whether or not a person at large on bail, after conviction by a State Court, could maintain an action of Habeas Corpus in a United States District Court within the territorial jurisdiction of the State Court in which the Petitioner is restrained under bond. Rule 38, 5(b).

This is a matter of importance which has not been directly presented to this Court, and in view of the conflict between the United States Courts of Appeal for the Seventh and the Eighth Circuits, together with the interpretation of the new provisions of Chapter 153 of the United States Code, particularly with reference to State custody, merits review by this Court.

Respectfully submitted,

C. Floyd Huff, Jr.,
Hot Springs, Arkansas,
Attorney for Petitioner.

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CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1949

No. 808

JAY M. BOWLAND, Petitioner

vs.

STATE OF ARKANSAS, Respondent

RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF AND ARGUMENT FOR RESPONDENT

IKE MURRY
Attorney General
Little Rock, Arkansas

R. J. GATLIN
Prosecuting Attorney
Eighteenth Judicial District of Arkansas
Hot Springs, Arkansas

JOHN WILLIAMS
Chief Assistant Attorney General
Little Rock, Arkansas

JEFF DUNN
Assistant Attorney General
Little Rock, Arkansas

Attorneys for Respondent

Journal Printing Co., Newark, Ark.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1949

No. 699

JAY M. ROWLAND ..... *Petitioner*

vs.

STATE OF ARKANSAS ..... *Respondent*

RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF AND ARGUMENT FOR RESPONDENT

STATEMENT

On the 12th day of October, 1947, the petitioner was convicted in the Circuit Court of Garland County, Arkansas, on a charge of bribery and was sentenced to pay a fine of $750.00 and to serve one year in the penitentiary. The petitioner appealed the conviction to the Supreme Court of Arkansas where it was affirmed and a Petition for Rehearing denied. A Petition for Writ of Certiorari was filed in the Supreme Court of the United States and denied on February 28, 1949; a Petition for Rehearing in the Supreme Court of the United States was denied on March 28, 1949. The petitioner, when arrested and during the progress of the trial in the lower court, furnished bail bond in the sum of

$3,000.00, and also furnished bail bond to the Clerk of the Supreme Court of Arkansas in the sum of $3,000.00, which bonds have been at all times in full force and effect and the appellant has been free under those bonds.

The petitioner while under the above bonds, filed a Petition for Writ of Habeas Corpus with the United States District Court for the Western District of Arkansas, Hot Springs Division, and was admitted to bail in the sum of $3,000.00 by the Honorable John E. Miller, Judge of said Court on March 29, 1949 (R. 6-7). On September 2, 1949, the United States District Court for the Western District of Arkansas, Judge Harry J. Lemley presiding, entered a judgment denying petitioner's Petition for Writ of Habeas Corpus, holding that on March 29, 1949, petitioner was not in such custody as required by law to give the court jurisdiction of habeas corpus proceedings (R. 24-33).

ARGUMENT

In the original Petition filed March 29, 1949, before the United States District Court for the Western District of Arkansas, Hot Springs Division, the petitioner alleged that he was then actually, unjustly and unlawfully restrained of his liberty. Thereafter, he makes the following allegation, which is by the respondent conceded (R. 2):

> "That your Petitioner has furnished bail bond to the said Garland County, Arkansas, in the sum of Three Thousand ($3,000.00) Dollars, which bail bond is now in effect, and also has furnished bail bond to the Clerk of the Supreme Court of Arkansas in the sum of Three Thousand ($3,000.00) Dollars, which bail bond is now in effect."

It is, therefore, undisputed and undenied and conceded that the petitioner, at the time of the filing of his Petition herein, was not and is not now actually physically restrained of his liberty by the said respondent. The very nature of habeas corpus and the very basis implies the bringing before the Court by the respondent the body of the prisoner in order that the cause of his restraint may be adjudicated. An actual or physical restraint is necessary to warrant interference by habeas corpus. It is accordingly well settled that a person out on bail is not so restrained of his liberty as to be entitled to a Writ of Habeas Corpus. 25 Am. Jur. 158, Sec. 24. The sole function of the writ is to relieve from unlawful imprisonment and it cannot properly be used for any other purpose. 29 C. J. 12, Sec. 5. We find the following quotation in 39 C. J. S. 440, Sec. 9:

> "Persons discharged on bail are not restrained of their liberty so as to be entitled to discharge on habeas corpus."

In the case of *United States, ex rel Walmer* v. *Tittemore*, 61 Fed. (2) 909, the Circuit Court of Appeals of the Seventh Circuit holds:

> "Second. May one who has been arrested pursuant to criminal warrant issued upon the return of Indictment by Federal Grand Jury and who has been released on his given bond for his appearance in the Court wherein the Indictment was returned, if unsuccessfully contesting removal proceedings from one federal district to another obtain his release through a Writ of Habeas Corpus?
>
> "Our answer to both questions must be in the negative. * * * The second question is similarly answered on the authority of *Stallings* v. *Splain*, 253 U. S. 339; 40 S. Ct. Rep. 537; 64 Lad Ed. 940; and Cyc. of Fed. Procedure, Vol. 5. Sec. 1890."

One of the leading cases involving habeas corpus is the case of *Stallings* v. *Splain*, reported in 253 U. S. 339, 40 S. Ct. Rep. 537, 64 Law Ed. 940. Mr. Justice Brandeis, speaking for the Court, said:

> "Stallings' position was thereafter no better than if he had applied for the writ after he had given bail. It is well settled that under such circumstances a petitioner is not entitled to be discharged on habeas corpus * * * being no longer under actual restraint within the District of Columbia, he was not entitled to the Writ of Habeas Corpus." *Wales* v. *Whitney*, 114 U. S. 564. 5 S. Ct. Rep. 1050, 29 Law Ed. 277.

Another well considered case is *McNally* v. *Hill*, 293 U. S. 131, 55, S. Ct. Rep. 24. Mr. Justice Stone, speaking for the Court, said:

> "The purpose of the proceeding defined by the statute was to inquire into the regularity of the detention and the only judicial relief authorized was the discharge of the prisoner or his admission to bail and that only if the detention were found to be unlawful."

The Circuit Court of Appeals for the Third Circuit in the case of *United States, ex rel Potts* v. *Rabb*, 141 Fed. 2d 45, reviews the Writ of Habeas Corpus in the following language:

> "The appellant in effect argues that because there was a short period of time following his arrest on the afternoon of November 15, 1943, in which he was in the custody of the United States Marshal, he is entitled to prosecute this appeal, despite the fact that he was admitted to bail a little later upon the afternoon of that day. We cannot agree. * * * Indeed, if we were to reverse the order of the court below and direct it to grant the writ, our mandate would be a nullity for the appellant is not presently deprived or restrained of his liberty."

Petition for Writ of Certiorari in the Supreme Court of the United States was denied in this case. 322 U. S. 727.

The definition of "restrained" or "imprisonment" is set out in *United States, ex rel Carpa* v. *Curran*, 297 Fed. 946. Judge Rogers, speaking for the Court, said:

> "The term 'imprisonment' imports any restraints placed upon one contrary to his wishes and amounting to a physical detention of his person."

Justice Lamar in the well considered case of *John A. Johnson* v. *Luman T. Hoy*, 227 U. S. 245, 33 S. Ct. Rep. 241, says:

> "* * * since the appeal he has given bond in the District Court and has been released from arrest under the Warrant issued on the Indictment. He is no longer in the custody of the Marshal to whom the writ is addressed and from whose custody he seeks to be discharged."

In the case of *Ex parte Dierks*, 55 Fed. 2d 371, the Court, announcing the rule, says:

> "Habeas Corpus is directed to a person detaining another, commanding him to produce the body of the prisoner and to submit to whatever the Court or Judge issuing the writ shall consider in that behalf."

In the case of *Doss* v. *Lindsley*, 53 Fed. Supp. 427, Judge Lindley again reviews the rule, as follows:

> "The purpose of the proceedings defined by the statute was to inquire into the legality of the detention and the only judicial relief authorized was the discharge of the prisoner or his admission to bail, and that only if his detention were found to be unlawful. *McNally* v. *Hill, Warden*, 293 U. S. 131, 55 S. Ct. Rep. 24, 79 Law Ed. 238. Thus, the Supreme Court has said: 'Its purpose is to enable the Court to inquire first if the petitioner is restrained of his liberty. If he is not, the Court can do nothing but discharge the writ.' * * * In *McNally* v. *Hill, Warden*, 293 U. S. 131, at page 138, 55 S. Ct. 24, at page 27, 79 Law Ed. 238, the Court said: 'Without restraint of liberty, the writ will not issue.' *Walls* v. *Whitney*, 114 U. S. 564, 5 S. Ct. Rep. 1050, 29 Law Ed. 277; and *Stallings* v. *Splain*, 253 U. S. 339, 343, 40 S. Ct. 537, 64 Law Ed. 940. Equally without restraint, which is unlawful, the writ may not be used. *A sentence which the prisoner has not begun to serve cannot be the cause of restraint which the statute makes the subject of inquiry.*"

The excellent case of *Wales* v. *Whitney*, 114 U. S. 1050, holds:

> "Something more than moral restraint is necessary to make a case for habeas corpus. There must be actual confinement or the present means of enforcing it." (Page 1053).

The District Court of the United States for the Middle District of Pennsylvania in *Veach* v. *Smith*, 42 Fed. Supp. 161, adheres to the rule:

> "Petitioner having given bond and having been released from arrest, he is no longer entitled to the benefit of the Writ of Habeas Corpus. He is no longer in the custody of the persons to whom the writ is addressed and from whose custody he seeks to be discharged."

CONCLUSION

We therefore respectfully submit that the Petition for Writ of Certiorari herein should be denied.

Respectfully submitted,

IKE MURRY
Attorney General
Little Rock, Arkansas

R. J. GLOVER
Prosecuting Attorney
Eighteenth Judicial District of Arkansas
Hot Springs, Arkansas

JOHN WILLIAMS
Chief Assistant Attorney General,
Little Rock, Arkansas

JEFF DUTY
Assistant Attorney General
Little Rock, Arkansas

Attorneys for Respondent

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 699

JAY M. ROWLAND,

Petitioner.

vs.

STATE OF ARKANSAS,

Respondent

PETITION FOR REHEARING ON APPLICATION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Comes now the above named Petitioner, Jay M. Rowland, and presents this, his Petition for a Rehearing on the Petition for Writ of Certiorari in this case, and in support thereof states:

I

Jurisdiction

The Petition for Writ of Certiorari was filed on the 22nd day of March 1950, and was denied on the 8th day of May 1950. This Petition for Rehearing is filed within less than fifteen days thereafter, under Rule 33 of the Rules of this Court.

II

Reasons for Petition for Rehearing

1. On re-analysis, it is found that neither the Petition for Writ of Certiorari nor the supporting Brief specifically points out that the error of the United States Court of Appeals upon the principal question of general law involved was the controlling factor in the case. That error lay in interpreting Section 2254 of the 1948 Recodification of the Judicial Code. 28 U. S. C., Section 2254; 28 U. S. C. A., Section 2254. STATE CUSTODY.

2. A correct ruling, in accordance with this Court's decision on that question of general law, would have resulted in a different disposition of this case.

III

The controlling question, therefore, is: When and by what method or means of restraint is a person in custody pursuant to the judgment of a State Court, that he may under the provision of Section 2254 (*supra*) have an examination into the substance of his protest against unconstitutional detention?

IV

On that question, the holding of the United States Court of Appeals in this case is in direct conflict with the applicable decision of this Court in the most recent case of *Darr* v. *Burford, Warden, Oklahoma State Penitentiary*, 70 S. Ct. 587, —— U. S. ——, decided April 3, 1950. This decision is an intervening circumstance of substantial and controlling effect and was unreported at the time the Petition for Writ of Certiorari and accompanying Brief were filed.

This Court has said in *Darr* v *Burford* (*supra*) at pages 593-594:

> "In 2254 of the 1948 recodification of the Judicial Code, Congress gave legislative recognition to the Hawk rule for the exhaustion of remedies in the State Courts and this Court. This was done by embodying in the new statute the rulings drawn from the precedents."

V

The custody pursuant to the judgment of a State Court should, therefore, embody in the new statute (Section 2254 of the Judicial Code) the rulings drawn from the precedents.

McKenzie v. *Barrett*, 141 Fed. 964, 73 C. C. A. 280, establishes the precedent with reference to custody pursuant to the judgment of a State Court while a person is at large on bail.

This is a substantial ground, not previously presented, arising from the principle asserted in *Darr* v. *Burford* (*supra*).

VI

Public Importance

In Chapter 153 of Title 28, U. S. C.:

Section 2241 (a) refers to "the restraint complained of".

Section 2241 (c) refers to "custody".

Section 2242 refers to "applicant's commitment or detention".

Section 2243 refers to "person detained".

Section 2244 refers to "detention of a person pursuant to a judgment of a court".

Section 2251 refers to "person detained in any State Court or under the authority of any State".

Section 2252, refers to "in custody of state officers, or by virtue of State laws".

Section 2253 refers to "detention complained of".

Section 2254 refers to "in custody pursuant to a judgment of a State Court".

Apparently Congress intended to include all manner of restraint, detention, and custody whereby persons restrained in violation of Constitutional rights may regain their freedom. Actual imprisonment is not spelled out in these statutes as a prerequisite for maintaining *Habeas Corpus* proceedings, and there is no provision that a person at large under bond may not be heard in protest against violations of his Constitutional rights by a State Court judgment.

There is nothing of greater public importance than the effective protection of the Great Writ to safeguard a citizen against imprisonment by State or Nation in violation of his Constitutional rights. It is within the discretion of the Supreme Court of the United States to clarify and eliminate these conflicting requirements as to restraint, detention, and custody, and it is to the public interest that doubt concerning this issue should not go unresolved.

VII

For the foregoing reasons, Petitioner respectfully urges that a rehearing be granted; that upon further consideration the Order of this Court on May 8, 1950 denying the Petition for Writ of Certiorari be revoked; and that the Writ of Certiorari issue.

Respectfully submitted,

C. Floyd Huff, Jr.,
Hot Springs, Arkansas,
Attorney for Petitioner.

Certificate of Counsel

I, C. Floyd Huff, Jr., Attorney for the above named Petitioner, Jay M. Rowland, do hereby certify that the foregoing Petition for a rehearing of this cause is presented in good faith and not for the purpose of delay, and I further certify that the said Petition is restricted to intervening circumstances of substantial or controlling effect and to other substantial grounds available to petitioner although not previously presented.

C. Floyd Huff, Jr.,
Hot Springs, Arkansas,
Attorney for Petitioner.

(8211)